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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1959

No. 2

BARTON W. FREELAND, ET AL.,

Petitioners,

versus

SUN OIL COMPANY and CITIES SERVICE OIL COMPANY; SOHIO PETROLEUM COMPANY, Intervenor,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Barton W. Freeland and others, hereinafter referred to collectively as Lessors, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, affirming the jurgment and decree in a suit filed in the Fifteenth Judicial District Court, Acadia Parish, Louisiana, but removed to and decided by the United States District Court, Western District of Louisiana, Lake Charles Division.

OPINION BELOW

The opinion of the Court of Appeals of the Fifth Circuit is not yet reported and is printed, infra, Appendix p. 9 herein.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. 1254, Act of June 25, 1948, c.646, 62 Stat. 928.

QUESTIONS PRESENTED

The questions presented are (1) whether an oil company holding an oil and gas lease from a landowner can oblige the landowner without his consent to use a portion of the royalties due under the terms of the lease to pay for the cost of acquiring and operating a plant for the extraction of liquid hydrocarbons as a part of a recycling program and paying income taxes on the profits derived therefrom, and, (2) whether the Court is justified in ignoring the practice in the other unitized oil and gas fields in Louisiana in determining whether and to what extent charges for the extraction of liquid hydrocarbons may be imposed upon the landowners.

STATEMENT OF THE CASE

A natural gas cap was found to overlay an oil field. Removal of the gas before removal of the oil would cause economic waste by permitting the oil to move into the sands vacated by the gas resulting in substantial diminution of recovery. Hence the Conservation Commissioner permitted development of the whole field as if the land belonged to one

owner and was leased to one company though in fact there are many owners and many leases. This unitization was predicated on an operation called recycling by which the natural gas is taken from the ground and into a plant where liquid hydrocarbons are extracted from the gas and the gas is returned to the ground in the expectation that it will not be produced and sold until the underlying oil has first been produced and sold.

The lessees, instead of conducting this extraction process which is an integral part of the recycling operation without which the unitization of the field would neither be useful to the landowner nor legally justifiable, contracted with another party to do so on a basis which will return to the other party the entire plant investment, all operating expenses, income taxes on the operating profit, and, of course, a profit after taxes.

Without the agreement of the lessors, who are the plaintiffs herein, unless an implied agreement can be found in the oil and gas leases presented by the companies to the landowners, and without express provision for such an operation, the oil companies imposed one eighth of the cost of the plant, its operating expenses, the income tax paid on profits, and one eighth of the profits after taxes on the landowners, by the device of compensating the plant owner with a portion of the liquid hydrocarbons extracted and paying royalties to the landowners only on the remaining liquid hydrocarbons.

Suit filed by the lessors in the state court was removed to the federal court because of diversity of citizenship and the amount involved. The district court and the Court of Appeal sustained the action of the oil companies.

REASONS FOR GRANTING THE WRIT

The issues involved are not federal in nature and ought to be determined by the state courts. However, the amounts involved in recycling operations are always great and the oil companies in this litigation and in such operations generally are not Louisiana companies. No decision has been obtained from the Supreme Court of Louisiana as to whether an oil company can impose a part of recycling cost upon the landowner without his consent. The decisions relied upon by the Court of Appeals are not factually apposite to the issue now presented. While the statutes of Louisiana permit recycling upon the order of the Conservation Commissioner, the statutes do not purport to permit any part of the cost thereof to be imposed upon the landowner without his consent and the Commissioner in this instance specifically stated that he did not pass upon the point as he considered it a question of contract to be agreed upon by the parties or to be determined by the Court.[1] No decision of the Supreme Court of Louisiana supports the taking of liquid hydrocarbons from the gas without paying for the gas[2] and decisions in other jurisdictions are not uniform

1. The only order which mentions the use of a plant is Order 111-Q dated January 3, 1951 before the unit here involved (Egan-Hayes) was even considered and it made no reference to any specific charge. (Exhibit 1, Transcript 131.) The order first permitting recycling is No. 111-T dated October 30, 1952. (Exhibit 2, sent up in the original, Transcript 139.) The Commissioner did not undertake to affect the royalty rights for he said:

> "Commissioner Digby: Well, I think that is a legal question under your contract, the question of whether you have a right to run this gas through the plant and charge them forty-five per cent. It isn't much of my business, as I see it. . . ."

2. Coyle v. Louisiana Gas & Fuel Co., 175 La. 990, 144 So. 737 (1932), Crichton v. Standard Oil Co. of La., 178 La. 57, 150 So. 668 (1933), and Wall v. United Gas Public Service Company, 178 La. 908, 152 So. 561 (1934), all involved cases where the gas produced was actually sold. In the present case the gas has not been sold but has been returned to the

on the point.[3] As the defendants have prevented a determination of this point by the Supreme Court of Louisiana by removing this suit to the federal court and as the result of the decision is to deprive the landowners of a substantial portion of their gas—about ten times more than in other recycling operations in Louisiana in the few cases where charges have been agreed upon by the landowners—the Court should grant the writ applied for to prevent the imposition of these unreasonable charges by unilateral action and in the absence of agreement.

The Court upon review will find that there are twelve other recycling operations in Louisiana. In nine of them, the operating companies do not attempt to charge the landowners anything in connection with recycling. Three others, operated by one company, resulted in AGREEMENTS of 12¢ or 15¢ per barrel. Here, the charge amounts to about $1.37 per barrel. Many of the landowners agreed. The plaintiffs in this case did not.

The Court will note that the lower court rejected out of hand consideration of these other fields on the basis that every gas field differs from every other. True the world is

ground. Those cases were decided before the Conservation Statute of 1940 from which springs the authority for recycling operations and none of them involved recycling. In those cases, the gas was not marketable without first processing it and the liquid extracted was discarded. The Court upheld a charge for making the gas marketable under the unjust enrichment rule provided by Louisiana law. See the authoritative Summers, Oil and Gas, § 594, p. 156. This is not applicable here. The Court erred on page 6 of its opinion in stating that this gas had little marketability and no demonstrated market value. The fact is that the reason for not attempting to market this gas is the desire to keep it in place to prevent waste of the underlying oil which would seep into the sand now occupied by the gas if the gas were removed first.

3. Hammett Oil Co. v. Gypsy Oil Co., 218 P. 501, 95 Okl. 235, 34 ALR 275 (1923), where such charges were not permitted.

filled with an infinite variety of things, but the principle remains that landowners agree to take a small part of their minerals and permit the lessee to take the great part because the lessee usually takes all of the risk and makes all of the investment. Here, these lessees found another party to share the risk and make part of the investment. This should not justify their forcing their lessors to make part of this investment through reduced royalties.

Before the Conservation Commissioner granted the recycling order he caused the proposed unitization agreement to be presented to the landowners. That unitization agreement made it clear that no charge was to be made for recycling. (Section 3, Article II, page 53 of the Transcript.) Another, (Section 1, Article IV, page 59) adverted to a separate agreement between the oil companies and the separate plant owner upon which these exhorbitant charges are based. Some of the present plaintiffs did not sign or ratify the unitization agreement at all. Some few did but after learning of the nature of the charges withdrew their approval **before** the Commissioner acted. Obviously, the extraction process is a part of the recycling without which there would not be any recycling at all. Obviously, the recycling which permitted unitization of the whole field saved the companies the cost of many wells which would otherwise have been required. Obviously, also, the companies who have agreed to share the product in such manner as to fully pay for the plant, its operation, income taxes on the profit of operating the plant and profit after taxes had to see some advantage to themselves in so doing. Otherwise they would have conducted this operation themselves as is generally done. As the separate owner of the plan testified, this advantage was the retention of their funds for use in other

purposes. They should not, however, be permitted to pass part of the cost of obtaining this advantage to non consenting land-owners.

Had the lessees sold the gas the royalty due would have been one eighth of the value at the well under the terms of the leases prepared by them. But they did not sell the gas. The gas is being returned to the ground as a conservation measure. Nothing in the leases prepared by them specifically covers the situation. Currently, since recycling has become known, specific provisions are usually made—sometimes that the lessors will pay some costs—sometimes that they will not. As these leases are silent on the point and as they were prepared by the lessees, they should not be permitted to make a charge not provided for in the lease by now attempting an analogy upon which they did not rely when they sought a new agreement from these plaintiffs which they did not obtain.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted and that the judgment of this the Court of Appeals, Fifth Circuit, should be reversed and that the plaintiffs should be paid the royalties called for by their leases without deduction of recycling-extraction costs, or, alternatively, that such

charges should be limited to 15¢ per barrel, the highest otherwise charged in recycling operations to Louisiana.

Respectfully submitted,

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APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17,805

BARTON W. FREELAND, ET AL.,

Appellants,

versus

SUN OIL COMPANY and CITIES SERVICE OIL COMPANY; SOHIO PETROLEUM COMPANY, Intervenor,

Appellees.

Appeal from the United States District Court for the Western District of Louisiana.

(March 24, 1960.)

Before JONES, BROWN and WISDOM, Circuit Judges.

BROWN, Circuit Judge: The basic question is whether a Louisiana mineral lessor's 1/8 gas royalty is to be based on 100% of the liquids extracted by an independent gasoline processing plant or on only that portion deliverable to the mineral interest owners after the processor has taken its share. Stated more simply, is the lessor to bear any part of the cost of processing? For if the basis is 100%, the result is that the lessor bears none of the costs. If the basis is the quantity remaining after the processor has taken its share, the lessor bears his proportionate part (e.g., 1/8) of the processor's share.

The District Court, on summary judgment, held that under the leases involved, the lessor must bear his prorata costs of processing. On the controverted issue reserved for trial, the Court, after trial, held that the processing costs chargeable under the processing agreement were not shown to be unreasonable. It therefore held in favor of the lessee-oil companies and against the lessor-royalty owners. We agree as to both actions.

As the primary question is one of law turning on the application of the lease contracts, the facts may be severely compressed. To secure maximum recovery of the minerals in the Egan Field of Acadia Parish, Louisiana, the Louisiana Conservation Commission pursuant to statutory authority ordered a unitization of large numbers of separate tracts and leases. This required the installation and maintenance of a recycling operation. In recycling, the gas flowing through the wellhead is first stripped of recoverable liquids. The dry gas remaining, quite appropriately called "residue gas" is used in two ways. A part may be sold and delivered to gas transmission concerns for resale as fuel to domestic or industrial users. The other portion, in the quantities and methods prescribed by conservation authorities, is then subjected to high pressure in the compressor plant and thereafter reinjected into the earth for repressurizing of the natural reservoir.[1] This recycling has to do with production of both gas and oil. It is a cost of production and the lessees have borne this without any attempted apportionment to the lessors.

We are not here concerned with royalty on the residue

1. One of the conservation orders points out that approximately 3,000,000 barrels of oil, as well as substantial quantities of other hydrocarbons, would be recovered which would otherwise have been lost through retrograde condensation. Although in quite a different context the recycling-processing operation is described at length in Scofield v. LaGloria Oil & Gas, 5 Cir., 1959, 268 F.2d 699, cert. denied, ... U.S. ....., ... S.Ct. ....., ... L. Ed. ..... [Jan. 11, 1960, 28 LW 3207]

gas. That portion returned to the reservoir appears to be royalty-free under the lease.[2] On that portion sold, full royalties have been paid. What we are concerned with is the products obtained by the extraction process. This related to that step we briefly characterized above as gas being "stripped of recoverable fluids." These products comprise the heavier hydrocarbons reduced to a liquid state.

The liquid content of the gas is not separated on the leased premises. On the contrary, it is carried with other full stream gas to the processing plant. At the processing plant, the gas first goes through an inlet separator which removes the condensate from the full stream gas. As there are still heavier hydrocarbons remaining, the gas flowing out of the separator is sent to absorption towers where additional liquids are absorbed out. The residue gas is then sent through a dehydrator and is delivered to the pipe line company or returned to the recycling plant for reinjection into the reservoir. The liquids recovered from the inlet separator and absorption tower steps are then further processed through the fractionator to obtain propanes, butanes, motor fuel, and other products.

The processing plant is not owned or operated by either the lessor or lessees. It is owned by the Acadia Corporation, a corporation owned by an enterprise having extensive experience and technical competence in gas plants. The plant is an expensive and substantial industrial installation. It cost approximately $1,800,000. It was built by Acadia to handle the gas from this field after prolonged negotiations with the lessee-oil companies. Acadia, the processor, receives under the processing contract as compensation for building and oper-

2. The leases provide:

"Lessee shall have free use of oil, gas, coal and water from said land except water from Lessor's wells for all operations hereunder, and the royalty on oil, gas and coal shall be computed after deducting any so used."

ating the plant 35.7% of the end products. The balance, 64.3%, is returned to the lessees. The lessee-oil companies have paid the 1/8 royalty on this 64.3%. What is at issue is the royalty on the 35.7% retained by Acadia, the processor.

We are not confronted with the question which plagues so many early cases, here and elsewhere, whether a lease covering gas and providing for payment of royalties for gas would encompass liquid products obtained from gas. *Union Producing Co. v. Pardue*, 5 Cir., 1941, 117 F.2d 225; *O'Neal v. Union Producing Co.*, 5 Cir., 1946, 153 F.2d 157, cert. denied, 329 U.S. 715, 67 S.Ct. 46, 91 L.Ed. 621; *Arkansas Natural Gas Corp. v. Sartor*, 5 Cir., 1938, 98 F.2d 527; see 3a SUMMERS, OIL & GAS, §§595, 596 (1958) and §596 (1959 Supp.). For the leases involved here expressly reserve royalties on gas in its gaseous state as well as gas used in the manufacture of gasoline and other products. The problem is not *what* is covered, i.e., conveyed by the grant. The problem is *how* is the royalty interest to be measured in the gas thus conveyed?

The answer must be found in the contracts which provided:

> "The royalties to be paid by Lessee are: * * * (b) on gas, including casinghead gas or other gaseous substance, produced from said land and [1] sold or used off the premises or in the manufacture of gasoline or other products therefrom, the market value at the well of one-eighth of the gas so sold or used, provided that on [2] gas sold at the wells the royalty shall be one-eighth of the amount realized from such sale * * *."

3. Subparagraph (a) prescribed the royalties for oil as follows:
"(a) On oil, one-eighth of that produced and saved from said land, the same to be delivered at the wells or to the credit of Lessor into the pipe line to which the wells may be connected. Lessee may from time to time purchase any royalty oil in its possession, paying the market price therefor prevailing for the field produced on the date of purchase;."
For ease in discussion, we have inserted the brackets [1] and [2] in subparagraph (b) quoted above in the text covering gas.

The lease, quite plainly, thus makes separate provision for two main situations: first, where the gas is [1] "sold or used off the premises"; and second, where it is [2] "gas sold at the wells." On the latter [2], the royalty is the specified fraction of the *amount* actually received. But where the gas is [1] sold or used off the premises, it is the "market value at the well" of gas so sold or used.

Here the record is uncontradicted that prior to the making of the processing contract with Acadia, the gas at the wellhead had little marketability and hence no demonstrated market value. As gas had to be repressurized for reinjection into the reservoir, the gas operations, apart from increased *oil* recoveries, would be productive only to the extent that liquefiable components could be extracted in the in the course of the passage of the gas from wellhead through compressor and reinjection into the reservoir. In other words, if all of the gas and its components were restored to the reservoir, nothing of value would be obtained from the gas. To achieve recovery of liquid components with maximum efficiency, a modern, expensive gasoline extraction plant was essential. Quite obviously then the value of the raw, wet gas in its relatively unmarketable state at the wellhead was not equivalent to the price which the end product of that industrial process would command. The wet gas was important. Indeed, it was the indispensable raw material. But the availability of the extracting process and its application enhanced the value of the gas. The enhancement is of the value of the gas at the wellhead, not at a subsequent point, much as would be the case in the comparative availability of pipe line connections for ordinary gas.

In determining the market value of such gas at the well where there is no established criteria of a market, the Louisiana approach, which is binding on us, is to consider the end product of the extraction process as a factor. But it is a factor in reconstructing a market value at a place where in fact there

was no, or little, market and consequently an appropriate deduction must be made.

The first case was *Coyle v. Louisiana Gas & Fuel Co.*, 1932, 175 La. 990, 144 So. 737. After first holding that the lessor-royalty owner was entitled to royalty on 100% of the products of the extraction plant, the Court on rehearing held that the royalty should be computed on the basis of that portion of the end products which were returned by the processor under the processing contract.[1] The Court proceeded from the point of view that where large expenditures make a valueless commodity one of great value, the contract would be harsh unless the costs were shared. Consequently, it was proper that the contract should be construed, if possible, to avoid that result. The Court then declared that "the law would step in, as a part of the contract" to say whether the royalty should be delivered free of costs. "This," the Court said, "we think the law has done by providing, in effect, that the cost of extraction, incurred by the lessee, to preserve the gas and its gasoline content, by making both merchantable, should be deducted before computing and delivering the lessor's royalty." 144 So. 743.

This was followed by *Crichton v. Standard Oil Co. of La.*, 1933, 178 La. 57, 150 So. 668. The Court described the royalty provisions as follows. "It is seen that the oil royalty is one-eighth of the oil to be delivered and stored on the premises, and the gas royalty is one-eighth of the market value of the gas sold or use off the premises for the manufacture of gaso-

1. The Court described the royalty obligations as follows.
"(2) To pay the lessor one-eighth royalty for the gas from each well where gas only is found, while the same is being used off the premises. (3) To pay the lessor for gas produced from any oil well and used off the premises, or for the manufacture of casing-head gas, one-eighth royalty for the time during which such gas shall be used." The processing contract with the lessee's subsidiary company gave the processor ⅝ and the mineral owners ⅜ of the products. No mention was made of "market value" or "price."

line." The gas was sold by the lessee to the processing company for which the processor paid ⅛ of the market value of the end products. As in the *Coyle* case, the gas "was worthless until rendered valuable by the process of extracting the gasoline from it—a process that required the use of certain plant facilities that were not available to the [lessee oil companies]." The Court recognized that royalty was to be *paid* in money on the basis of "market value" rather than delivered in kind as in *Coyle*. But it regarded this as a "difference * * * more favorable to the [lessees] than was presented in the *Coyle* case * * *" since the royalty was based "on the market value of the wet gas and it is shown that there was no market value for that gas in its natural state." The Court nevertheless adhered to *Coyle* and held that the lessor was due royalty only on the ⅛ part of the products deliverable by the processor.

Of decisive importance is *Wall v. United Gas Public Service Company*, 1934, 179 La. 908, 152 So. 561. With respect to gas utilized or sold off the premises, the lease provided that the lessor "shall be paid one-eighth (⅛th) of the value of such gas calculated at the market price per" m.c.f. The lessees sold the gas to a pipe line at a point two miles from the well at 5.8 cents m.c.f. It extracted gasoline which it sold at the market price. The lessee paid royalty on the basis of 4 cents m.c.f. for the gas sold, and on the gasoline extracted at the market price less costs of extraction. The lessor claimed royalties on the gas at the price for which it was sold (5.8) and on gasoline without deduction for cost of extraction. After emphasizing that in *Coyle* and *Crichton* "the gas was so heavily impregnated with gasoline that it was worthless in its original state," the Court makes it clear that the absence of such a mineralogical factor does not result in a different rule of law. "The facts in that [*Coyle*] case are different from those in this case, but the principle involved is the same in this, that the lessee cannot be taxed with the whole cost of marketing the gas and extracting therefrom the gasoline." 152 So. at 564.

In a precise sort of way, the Court also demonstrates that the Louisiana approach is the effort to reconstruct a market value. As to the gas sold at a remote point (at 5.8 cents m.c.f.) the Trial Court allowed the lessor royalty on the basis of that price less the reasonable expense of transporting the gas from the wellhead to the point of sale. This produced a "market price" somewhat less than 5.8 but somewhat more than 4 cents as paid by the lessee. The Court recognized that this process of reconstruction was proper. Such "ruling," the Court stated, "would unquestionably be correct if as a matter of fact the gas had no 'market value' in the field. But we find as a fact that it did." 152 So. 564. The Court analyzes the evidence and declares that there was a market at 4 cents, and since that was the "market price" in the field, it had to be accepted as the basis of settlement in the case. 152 So. 565.

The Court in the plainest of language reaffirmed its earlier determination that a "lessor should bear his proportion of the expense of saving the gasoline and of rendering the gas valuable * * *." And it held that under leases of the type involved here, the lessor is "liable for cost of extracting gasoline from gas in proportion to the amount received by lessor." 152 So. 564.

These principles were applied in *Tyson v. Surf Oil Co.*, 1940, 195 La. 248, 196 So. 336. The Court points out there was "no direct evidence in the record to prove the market price of gas" in the particular field. The gas was "wet gas." Its market value, the Court stated, "is to be determined by considering the value of the gas from the standpoint of fuel, plus the value of the gasoline content." And then in great detail the Court goes through the mathematical process of making the separate determination of the two components (liquid hydrocarbons and residue gas) to arrive, after adding the two of them together, at the total market value. The calculations reflect a deduction for the extraction or processing charge.

The principle is much more pervading than the lessors would recognize. It is not, as they claim, limited to the extraction cost necessary to make an absolutely *worthless* thing (gas) into something of value. It stands for the proposition that in determining market value costs which are essential to make a commodity worth *anything* or worth *more* must be borne proportionately by those who benefit. To put it another way: in the analytical process of reconstructing a market value where none otherwise exists with sufficient definiteness, all increase in the ultimate sales value attributable to the expenses incurred in transporting and processing the commodity must be deducted. The royalty owner shares only in what is left over, whether stated in terms of cash or an end product. In this sense he bears his proportionate part of that cost, but not because the obligation (or expense) of production rests on him. Rather, it is because that is the way in which Louisiana law arrives at the value of the gas at the moment it seeks to escape from the wellhead.

Whether the costs of extraction (35.7%) payable to the processor are regarded as such, or perhaps may more properly be considered as an element in the retrospective reconstruction of a market value at the wellhead, the question of the reasonableness of the amount is the same. And as such, it is a question of fact on which the Trial Court's findings have the insulation of F.R.Civ.P. 52(a). These are not shown to be clearly erroneous. The Trial Court was eminently justified in regarding the transaction between the lessees and Acadia as one made at arm's length between businessmen negotiating vigorously for their partisan advantage. Neither fraud nor want of good faith nor arbitrariness, as such, is charged. Other leases, processing agreements, unitization contracts, recycling operation agreements conducted in other fields by other companies in Louisiana were received as bearing on the question

5. All of the cases are reviewed in Roy v. Arkansas-Louisiana Gas Co., 1942, 200 La. 233, 7 So.2d 895. Also see 16 TULANE L.REV. 634 (1942); 15 TULANE L.REV. 262, 265-270 (1941).

of reasonableness. The Court weighed them and found these circumstances to be wanting in probative force. Considering the variables in fields, operating and mineralogical conditions, relative position and economic strength of the parties to them, we cannot say it was in error.

The District Judge, trained and experienced in Louisiana law, was right on the law and summary judgment was correct. On the factual issues reserved for trial, his findings easily pass scrutiny and may not be rejected by us.

AFFIRMED.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 250

BARTON W. FREELAND, ET AL.,

Petitioners,

versus

SUN OIL COMPANY and CITIES SERVICE OIL COMPANY; SOHIO PETROLEUM COMPANY, Intervenor,

Respondents.

BRIEF OF RESPONDENTS OPPOSING PLAINTIFFS' PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 250

BARTON W. FREELAND, ET AL.,

Petitioners,

versus

SUN OIL COMPANY and CITIES SERVICE OIL COMPANY; SOHIO PETROLEUM COMPANY, Intervenor,

Respondents.

BRIEF OF RESPONDENTS OPPOSING PLAINTIFFS' PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF RESPONDENTS OPPOSING PLAINTIFFS' PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

This brief is being filed by Respondents pursuant to Rule 24 of the Revised Rules opposing Plaintiffs' Petition for Writ of Certiorari and to point up grounds why the cause should not be reviewed by this Court.

The opinion of the Court of Appeals and the record clearly disclose that the only thing actually involved in this case was a private dispute between a lessor and lessee under an oil, gas and mineral lease of Louisiana lands; the real issue relating only to royalties on gas produced by the lessee.

Obviously there was no Federal question at issue; there is no conflict in decisions of the Federal Courts; there is no point of general public interest; and certainly the case does not present any other question along the lines of those mentioned in Rule 19 of the Rules of this Court. And the Petition fails utterly to point out any "special and important reasons" for granting the writ.

The unfounded allegations of the Petition cannot bring the case within any of these requirements of the Rules.

The assertions under the heading "Questions Presented" and particularly under number (1) are not only confusing but foreign to any issue that was before the Court when the case was tried. The reference to income taxes in that paragraph is without any meaning whatever unless it was intended to give the erroneous impression that Federal income taxes are here involved so this Court might find interest in the problem. Whatever the purpose of the phrase, there is nothing in this case that has anything whatsoever to do with the payment of income taxes.

And there certainly is nothing in the case to support the earlier part of the same paragraph of Plaintiffs' Petition saying that the question presented is whether an oil

company lessee can oblige the landowner to use a portion of his royalties to pay the cost of acquiring and operating a plant for the extraction of liquid hydrocarbons as part of a recycling program; the question presented rather was to determine "the market value at the well of 1 8th of the gas" to meet the requirements of the express language of the royalty clause in the applicable leases providing:

> "The royalties to be paid by Lessee are: * * * (b) on gas, including casinghead gas or other gaseous substance, produced from said land and (1) sold or *used* off the premises *or in the manufacture of gasoline or other products therefrom, the market value at the well of one-eighth of the gas so* sold or *used*, provided that on (2) gas sold at the wells the royalty shall be one-eighth of the amount realized from such sale * * *." (Italics added.)

The persistent assertions of Plaintiffs' Petition that the royalty owners have been charged with Respondents' costs and particularly given as "Reasons for Granting the Writ" would not serve that purpose even if they were supported by the record. But they are far afield of the issues that were submitted to and decided by the Courts below.

The undisputed facts are that the gas produced by Respondents as Lessees is processed under an arm's length contract between them and a plant built, owned and operated by a third party corporation; Respondents have no interest in the processing plant or any profits that might be derived from it. All the gas processed in that plant bears the same processing charge and Respondents bear their proportionate part thereof; the net represents the

value of the liquid hydrocarbons in the gas—the value of that gas "at the well" from which it is produced. And the royalty owners receive their royalties on that gas at the same "market value at the well" received by Respondents for their share of the production.

The suggestions that Respondents are endeavoring to impose a part of the recycling costs on the royalty owners without their consent are also without any foundation whatsoever; and are mentioned specifically in order to point up that they are unqualifiedly denied by the record. For neither the processing plant nor the royalty owners have borne any part of the costs of the recycling program; all costs for that separate operation have been and are being borne by Respondents alone.

Plaintiffs' Petition is also grossly in error when it claims that the Louisiana decisions do not support a deduction of the cost of removal of liquid hydrocarbons in arriving at values for the payment of royalties. In *Coyle v. Louisiana Gas & Fuel Company*, 175 La. 990, 144 So. 737, and in *Crichton v. Standard Oil Company of Louisiana*, 178 La. 57, 150 So. 668, and more positively in *Wall v. United Gas Public Service Company*, 1934, 179 La. 908, 152 So. 561, the Supreme Court of Louisiana held that under a contract like the ones that were before the Courts in this case, the royalty had to bear its proportionate part of the cost of extracting the liquid hydrocarbons; and those cases, having determined the legal rule in Louisiana, well support the decision of the Court of Appeals here in determining the right under the contracts to charge a fair amount for the cost of removing the liquid hydrocarbons from the gas in fixing the value of

those hydrocarbons as the value of the gas at the well for royalty-paying purposes.

And the Court of Appeals found, as will readily be seen from the last few paragraphs of its opinion, that the amount charged was not shown to have been unreasonable or subject to complaint on any other ground; that as the Lower Court had determined this issue of fact correctly, there was nothing justifying a reversal of that decision in the case.

And there certainly is nothing justifying this Court granting a writ to review a case involving only a private contractual dispute between parties to a mineral lease and merely because the Petitioners are dissatisfied with the decision of the Lower Courts against them.

Respectfully submitted,

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